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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TEXAS DEMOCRATIC PARTY, DEMOCRATIC) AU:19-CV-01063-LY
SENATORIAL CAMPAIGN COMMITTEE,)
DEMOCRATIC CONGRESSIONAL CAMPAIGN)
COMMITTEE, EMILY GILBY, TERRELL)
BLODGETT, TEXAS YOUNG DEMOCRATS,)
TEXAS COLLEGE DEMOCRATS,)
)
Plaintiffs,)
)
V.) AUSTIN, TEXAS
)
RUTH HUGHS,)
)
Defendant.) MARCH 25, 2020

RACHEL MILLER, TEXAS DEMOCRATIC) AU:19-CV-01071-LY
PARTY, DNC SERVICES CORP., DSCC, DCCC,)
)
Plaintiffs,)
)
V.) AUSTIN, TEXAS
)
RUTH HUGHS,)
)
Defendant.) MARCH 25, 2020

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE LEE YEAKEL

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24 Proceedings recorded by computerized stenography, transcript
25 produced by computer.

14:02:13 1 (In chambers)

14:02:13 2 THE COURT: All right. Let's start with the
14:02:14 3 plaintiffs, and will somebody tell me who all is representing
14:02:18 4 the plaintiffs in this case.

14:02:20 5 MR. HAMILTON: I will, Your Honor. Good afternoon.
14:02:23 6 It's Kevin Hamilton on behalf of the plaintiffs -- or at least
14:02:27 7 the *Gilby* plaintiffs. And with me is John Geise, Chad Dunn,
14:02:33 8 and Amanda Beane.

14:02:36 9 THE COURT: All right. Any other party
14:02:39 10 representatives of any of the plaintiffs?

14:02:42 11 MR. HICKS: Yes, Your Honor. Renea Hicks here for
14:02:45 12 Terrell Blodgett, Texas Young Democrats and Texas College
14:02:48 13 Democrats. And there's no one else on the phone with me on
14:02:51 14 this.

14:02:51 15 THE COURT: All right. Let me get you checked off
14:02:56 16 here.

14:02:56 17 All right. And for the defendants?

14:03:03 18 MR. SWEETEN: Your Honor, this is Patrick Sweeten.
14:03:04 19 With me is Will Thompson and Eric Hudson. And we've got I
14:03:07 20 think remotely is Michael Abrams is on the line, too.

14:03:14 21 THE COURT: Mr. Abrams, are you there?

14:03:16 22 MR. ABRAMS: Yes, Your Honor.

14:03:16 23 THE COURT: All right. I think we've got everybody.

14:03:18 24 Okay. Talk a little bit about this, and I know
14:03:22 25 couple of you at least were on the line yesterday when we had

14:03:25 1 the case -- a hearing in another case involving the Secretary
14:03:31 2 of State. So basic ground rule is, when anybody speaks, first
14:03:36 3 thing you do is state your name so we can get you on the record
14:03:40 4 here.

14:03:40 5 We have in place the earlier scheduling order that I
14:03:48 6 entered on December -- that I signed on December 30th which
14:03:51 7 sets some dates for the filing of dispositive motions and
14:03:56 8 discovery cutoff and what have you. We've scheduled this as a
14:04:00 9 scheduling conference. So the first thing I'd like to ask --
14:04:06 10 and whoever wants to speak can do it -- what do we need to
14:04:12 11 schedule?

14:04:12 12 It seems to me we've got the motion to dismiss
14:04:15 13 pending. We need to schedule it. And then do we want at this
14:04:21 14 time to go ahead and schedule the case on the merits to see if
14:04:24 15 it survives the pretrial motions? Do we need to also get a
14:04:35 16 setting on any other motions that get filed in May? I'm pretty
14:04:39 17 flexible on this because we're not doing a whole lot right now.

14:04:42 18 The biggest problem you have is, because we're not
14:04:45 19 doing a whole lot right now, if we extend anything in this case
14:04:48 20 much past May or early June, you're not likely to get a
14:04:53 21 judgment before the November election. So you need to have
14:04:58 22 that in your mind. We have a big docket here anyway, and
14:05:02 23 the -- the plague has not assisted it in any way because of
14:05:07 24 what we have to do with the calendar.

14:05:10 25 So whoever wants to come first with suggestions, I'm

14:05:12 1 happy to hear you.

14:05:16 2 MR. HAMILTON: Your Honor, this is Kevin Hamilton on
14:05:18 3 behalf of the *Gilby* plaintiffs. And thank you.

14:05:22 4 THE COURT: Mr. Hamilton, are you saying the "guilty
14:05:25 5 plaintiffs"?

14:05:27 6 (Laughter)

14:05:27 7 MR. HAMILTON: "Gilby," but thank you. Hopefully
14:05:31 8 they're not guilty. We've had a number of discussions with
14:05:36 9 Mr. Sweeten over the course of the last few days, and there's a
14:05:40 10 number of things that I think we've agreed to with respect to
14:05:43 11 discovery and scheduling. So I'll just tick these off for the
14:05:47 12 Court's consideration.

14:05:49 13 First, as you'll recall, we were on the phone with
14:05:51 14 you earlier this week with respect -- or maybe last week --
14:05:54 15 with respect to a dispute over depositions. We've worked that
14:05:58 16 all out now and agreed on a process for taking depositions by
14:06:02 17 videotape and to work cooperatively to make that happen.

14:06:06 18 But we've agreed, under the circumstances, because of
14:06:08 19 the coronavirus and the problems that that presents, that the
14:06:18 20 discovery cutoff should be moved back to June 1st. And I've
14:06:22 21 assured Mr. Sweeten that, if he's unable to complete necessary
14:06:25 22 discovery by that date, that we would confer with him in good
14:06:29 23 faith to address any remaining discovery that he needed to
14:06:33 24 take.

14:06:33 25 Second, we've agreed that the expert witness

14:06:40 1 disclosure deadlines should remain undisturbed but that the
14:06:45 2 filing deadline for Daubert motions should be slid back to
14:06:49 3 May 15th, so moving it back two weeks.

14:06:54 4 And then, finally, we've agreed the dispositive
14:06:59 5 motions deadline should be moved back to June 1st. Now, we
14:07:05 6 recognize that has an impact on the Court's schedule as well.

14:07:08 7 Speaking for the plaintiffs, all of this is in the
14:07:10 8 hopes that we can complete discovery and set the case for a
14:07:13 9 trial date this summer. Candidly, though, given the Court's
14:07:19 10 comments about the trial calendar and the impact of the
14:07:22 11 pandemic that has descended on us all, that seemed uncertain at
14:07:28 12 this point. Our first preference would be, of course, to have
14:07:33 13 a trial on the merits in the summer.

14:07:35 14 THE COURT: All right. Let me interrupt you right
14:07:37 15 there, Mr. Hamilton. This whole thing gets much easier if we
14:07:47 16 could go right to trial with it. The problem you have in
14:07:50 17 getting a trial setting is, right now I have a motion to
14:07:52 18 dismiss pending and you're anticipating filing further
14:07:59 19 dispositive motions if it survives the motion to dismiss. All
14:08:08 20 of this -- and I realize what lawyers like to do -- but it
14:08:11 21 slices and dices the case up and pushes you down the line,
14:08:14 22 because it means I don't just have one thing I have to worry
14:08:17 23 about setting, I have three things I have do worry about
14:08:20 24 setting.

14:08:21 25 These kinds of cases I don't find as difficult

14:08:28 1 logistically as the lawyers do. I can't for the life of me
14:08:33 2 figure out, except I always fail in this plea, why I have to
14:08:38 3 have a dispositive motions deadline, why we should even have
14:08:42 4 dispositive motions. I've got the motion to dismiss I have to
14:08:46 5 take up, and then if I've got a schedule a dispositive --
14:08:54 6 hearing on dispositive motions and your deadline going to be
14:08:59 7 June the 1st, then we've got to have a response and then
14:09:02 8 there's got to be a reply. And then I've got to set it, or if
14:09:06 9 you don't want to have oral argument on it, that doesn't help
14:09:09 10 me at all in the amount of time I have to spend in considering
14:09:13 11 it.

14:09:14 12 All of these things that you're allowed to do by the
14:09:17 13 rules just put your case off down the line and makes it a lot
14:09:22 14 harder for the Court to deal with it. So I just tell you that.

14:09:27 15 If we don't get this done by November, it won't be --
14:09:32 16 or if I don't get a judgment out by November, it won't be
14:09:35 17 because I had trouble finding you a trial date. It's because I
14:09:41 18 had trouble setting everything separately that you want to set,
14:09:46 19 including any objections to Daubert motions. And you-all, you
14:09:53 20 know, will immediately get gold stars if I don't see any,
14:09:56 21 because everybody since we had Daubert objects to experts. I
14:10:04 22 think I could have a theoretical physics case, and one of you
14:10:08 23 would designate Einstein and I would get a Daubert motion.

14:10:12 24 So it's all of the motions, it's the run-up, that
14:10:15 25 holds you off getting a final determination. It's not dealing

14:10:19 1 with the case. So I want everybody to understand that, because
14:10:22 2 I am worried about getting this done by the November election.
14:10:26 3 But the reason I'm worried about it is not that this is a
14:10:31 4 difficult case for me to try. It's just that we have to slice
14:10:35 5 and dice it. So there you go. End of rant.

14:10:39 6 MR. HAMILTON: Your Honor, if I could just jump in
14:10:41 7 here. Maybe I've got a solution. I discussed this with
14:10:47 8 Mr. Sweeten as well yesterday. Our plan was, because of some
14:10:50 9 of the considerations that you mentioned and what we imagined
14:10:53 10 was going to be a crowded docket, was to file a motion for
14:10:56 11 preliminary injunction by April 10th. That eases the need for
14:11:01 12 a lot of this.

14:11:03 13 THE COURT: No. No. That gives me one more hearing
14:11:06 14 I have to have. But that's fine. You know, if you can agree
14:11:16 15 on a preliminary injunction, that would be great. But you're
14:11:19 16 not helping me if I get a motion for preliminary injunction in
14:11:24 17 April, because that just means it's one more thing I've got to
14:11:27 18 deal with, because sooner or later I'm going to have to hear
14:11:31 19 the dispositive motions and the Daubert motions and the motion
14:11:34 20 to dismiss.

14:11:37 21 MR. HAMILTON: Understood, your Honor. I think the
14:11:39 22 idea was that we would -- we would be filing a preliminary
14:11:43 23 injunction motion and deciding it on the papers. As far as I'm
14:11:50 24 concerned, if there's a motion to dismiss pending -- and there
14:11:53 25 is -- and we're filing a motion for preliminary injunction, I

14:11:56 1 don't see the need for a dispositive motion at that point if
14:11:58 2 any part of the case -- you know, if we achieve -- if the Court
14:12:02 3 grants the preliminary injunction motion, we can set the trial
14:12:08 4 well after the election. There's no need. It takes all the
14:12:10 5 pressure off.

14:12:11 6 If the Court denies the preliminary injunction
14:12:13 7 motion, then I'm not -- I'm just -- you know, obviously we
14:12:17 8 would prefer to have a trial date before the summer. But, if
14:12:20 9 that's going to -- the Court's calendar is probably going to
14:12:25 10 control that.

14:12:25 11 THE COURT: Well, keep going.

14:12:34 12 MR. HAMILTON: That's the main gist of what I was
14:12:37 13 going to say. There's one open dispute between the parties
14:12:40 14 that we have not been able to resolve. And that is the State's
14:12:44 15 request for leave to take more than ten depositions, the
14:12:48 16 presumptive cap under the federal rules. We just don't believe
14:12:50 17 that's necessary or appropriate. Most of the -- the reason
14:12:55 18 that's been advanced is because the plaintiffs have identified
14:12:58 19 more than ten potential individuals who may have relevant
14:13:03 20 knowledge under the Rule 26 disclosure.

14:13:06 21 We, out of an abundance of caution, listed folks that
14:13:11 22 we haven't even talked to but, because of their position as
14:13:14 23 state office holders, likely or may have relevant information
14:13:18 24 about the conduct of elections or the purpose of the
14:13:20 25 legislation. If we're proceeding on a preliminary injunction

14:13:24 1 motion, there's no need for a full-blown discovery. If we're
14:13:28 2 doing a full-blown discovery, then we might as well accelerate
14:13:36 3 and head to trial.

14:13:36 4 But, in any event, if the Court denies the motion for
14:13:37 5 a preliminary injunction and sets a trial date in the fall or
14:13:40 6 sometime after the election, then we'll have plenty of time to
14:13:44 7 do discovery then.

14:13:45 8 THE COURT: Well, I strongly believe that both sides
14:13:48 9 are making this case way more complicated than it is. But
14:13:52 10 what -- what have you done with regard to the plaintiffs'
14:13:55 11 motion to compel production? That seems to me like that's an
14:13:59 12 open dispute that's still out there.

14:14:04 13 MR. SWEETEN: Your Honor, this is Patrick Sweeten on
14:14:07 14 behalf of the secretary of state. And to answer your question
14:14:12 15 directly first, and then I can address some of the matters that
14:14:13 16 Mr. Hamilton raised, we have briefed that motion. That motion
14:14:17 17 was about the issue of legislative privilege. We have filed
14:14:24 18 our response to that, and that is at this point with the Court.
14:14:29 19 That's where that stands.

14:14:30 20 As the Court mentioned earlier, we do have a motion
14:14:33 21 to dismiss outstanding. The Court heard the arguments
14:14:39 22 yesterday. There's some overlap with respect to the motion to
14:14:42 23 dismiss. There's quite a bit in this case. So that, as the
14:14:45 24 Court has identified, is an open question.

14:14:47 25 Let me kind of go back, if this is okay, Your Honor,

14:14:50 1 to talk about some of the things that Mr. Hamilton addressed.

14:14:53 2 First of all, we heard this Court when last Tuesday
14:14:59 3 the plaintiffs, you know, wrote the Court and sought a hearing
14:15:03 4 and we had a hearing. We heard this Court, and we've had --
14:15:06 5 since that time, we've had three telephone conferences and
14:15:10 6 we've sent out probably half a dozen e-mails exchanged between
14:15:14 7 us as we're trying to work through this issue.

14:15:17 8 We have -- as we were working towards it, as of
14:15:20 9 yesterday, we thought we'd probably figured out a scheduling
14:15:26 10 order that might work. I think there were a couple of issues.
14:15:28 11 One is we wanted to make sure the dispositive deadline went
14:15:30 12 after fact discovery or at least on the day it closed. I don't
14:15:35 13 know that Mr. Hamilton addressed that.

14:15:37 14 But then yesterday late we heard that Mr. Hamilton
14:15:40 15 was planning -- that counsel was planning to file now a
14:15:44 16 preliminary injunction with the thought that they file that
14:15:46 17 April 10th. And at this point, you know, I think it's
14:15:51 18 important that we figure out what horse they're going to choose
14:15:55 19 to ride. And if the horse is -- we're going to ride the PI
14:15:59 20 horse, then I don't disagree with Mr. Hamilton. We ought to
14:16:03 21 just work on the scheduling order through the fall, and I think
14:16:05 22 we can figure a lot of the logistics out and the time deadlines
14:16:11 23 that way. And then we can address the motion for preliminary
14:16:14 24 injunction.

14:16:14 25 There are some -- you know, if he were to file the

14:16:19 1 preliminary injunction, which he's saying he's going to do, we
14:16:23 2 obviously would need time to do two things, and that would be
14:16:27 3 first to respond, because I would presume if he's talking about
14:16:32 4 doing it on the papers, then we're going to see some new
14:16:35 5 affidavits and some things that we haven't seen before. So we
14:16:38 6 would need some time to respond to that PI.

14:16:41 7 Secondly, because we probably are going to see some
14:16:44 8 new -- you know, some new opinions that we hadn't seen before,
14:16:48 9 we would certainly need time to take, you know, the necessary
14:16:52 10 depositions. That said, I think we could do that and file --
14:16:56 11 the State could file its response sometime in mid May, maybe,
14:17:00 12 May 15th, and provide our response. And then however the Court
14:17:05 13 wishes to proceed with respect to their PI, you know,
14:17:09 14 obviously, we would defer to the Court.

14:17:11 15 But if we're going to ride that horse, then it seems
14:17:13 16 to me that we've got to the -- you know, that the Court should
14:17:17 17 just abate the scheduling order that was intended to move the
14:17:21 18 case forward very quickly, and we'll do it in a PI posture, in
14:17:28 19 a way that allows both parties the ability to make their cases
14:17:33 20 both factually and legal.

14:17:35 21 So if that's what they're going to do, I think we're
14:17:39 22 going to need certainly more than the seven days that the
14:17:42 23 Western District provides for to respond to that kind of
14:17:45 24 situation.

14:17:46 25 Now, I will say that -- and this is now -- I think

14:17:49 1 that's -- if that's what the Court -- if that's what the
14:17:53 2 plaintiffs intend to do, then I think the scheduling order
14:17:56 3 should be pushed off and us deal with the PI issues.

14:18:00 4 So, all that aside, I did want to tell the Court
14:18:04 5 that, after the meeting, we have agreed to take some of the
14:18:07 6 video -- some of the depositions by videotape. We did agree to
14:18:14 7 extend the overall scheduling order. We also, with respect to
14:18:17 8 the depositions that he's discussed, the plaintiffs listed 33
14:18:22 9 witnesses on their initial disclosures. We have been able to
14:18:29 10 eliminate some that we don't think we need to depose, but
14:18:32 11 there's still, you know, somewhere around fifteen or so that
14:18:35 12 we'd like to at least talk to if we were going to be moving
14:18:41 13 toward an overall trial.

14:18:43 14 We could probably push that off until a later time if
14:18:46 15 we're going to -- if we're going under the preliminary
14:18:49 16 injunction posture and just take the depositions that were
14:18:53 17 necessary based on what they filed.

14:18:55 18 So we can go, you know, either way. If we want to do
14:19:00 19 the PI, I think the scheduling order should get continued. If
14:19:03 20 we're going to try to go to final trial and not go the PI
14:19:07 21 direction, then we obviously need more time, because we've got
14:19:12 22 to take -- understand, Your Honor, with these shutdown orders
14:19:17 23 and all that's going on, I mean, we've asked them, Who do you
14:19:19 24 represent of those fifteen? And most of those they don't
14:19:21 25 represent. And so we're talking about third-party subpoenas

14:19:24 1 and getting them on a video with one lawyer in one place,
14:19:27 2 another lawyer in another place. And I'm a not even sure right
14:19:33 3 now how we would get -- whether or not we're going to be able
14:19:36 4 to get compulsory process of those third-party witnesses that
14:19:40 5 they've disclosed.

14:19:41 6 Now, I've asked them to see if we could just limit
14:19:42 7 that and tell me who you're going to call at a final trial in
14:19:45 8 this case, and they indicated, as Mr. Hamilton said, that they
14:19:49 9 hadn't talked to those witnesses and so they don't know. And
14:19:52 10 so, we -- there is a potential for us shaving those down.

14:19:56 11 So I wanted to just let the Court know where we were,
14:19:58 12 let the Court know that it -- that I think that -- that, you
14:20:01 13 know, this is a crossroads and they pick the route. If it's a
14:20:05 14 PI, then I think everything else can move and we can just focus
14:20:09 15 on the PI, set this thing out, you know, in a normal schedule
14:20:15 16 through November, or whatever the Court deems would be
14:20:17 17 appropriate, but leaving the State enough time to be able to
14:20:23 18 react to the affidavits that would surely be there, the
14:20:26 19 arguments that they would be making, because, you know, to the
14:20:30 20 extent they're factual, we would obviously need the time to
14:20:33 21 take those depositions.

14:20:34 22 So that's the State's position with respect to it,
14:20:38 23 Your Honor. Are there any questions from the Court?

14:20:41 24 THE COURT: Well, yes. Number one, I'm not opposed,
14:20:46 25 if Mr. Hamilton wants to commit to us looking at a request for

14:20:52 1 preliminary injunction first. But none of you are giving me
14:20:56 2 any cold comfort that that does anything but prolong things.
14:21:01 3 I'm still going to have the motion to dismiss. Nobody is
14:21:06 4 saying they'll drop a request for dispositive motions.

14:21:11 5 So I don't mind going ahead that way. I also,
14:21:17 6 Mr. Hamilton, will tell you you need to now eliminate everybody
14:21:23 7 that maybe you've just heard about or seen on television and
14:21:28 8 get it down to who you're actually going to call.

14:21:32 9 One of the things that the coronavirus has done is --
14:21:36 10 and every lawyer needs to understand it because the judges are
14:21:39 11 having to come to ground with it -- it is not a business as
14:21:43 12 usual. This is a massive thing that has had great effects on
14:21:47 13 everybody's docket. I cannot tell you how much time I've spent
14:21:49 14 the last ten days in meetings with judges and reading things
14:21:52 15 coming out of the Administrative Office of the Courts. And all
14:21:56 16 of the administrative and procedural folderol that we've just
14:22:01 17 had to do bureaucratically around here and what we've had to
14:22:06 18 adjust to with our clerk's office out and will be out forever.

14:22:10 19 So what you-all need to do -- you've started on it,
14:22:14 20 but you need to go farther -- is paring this down and getting
14:22:18 21 it ready to go. Now, having said that, if you agree that we
14:22:28 22 can accomplish something by my looking at a request for a
14:22:32 23 preliminary injunction -- a motion for preliminary injunction,
14:22:40 24 what I would like to see from you is an agreed order for me to
14:22:42 25 sign, a scheduling order that abates -- well, that cancels the

14:22:50 1 existing scheduling order, the one that I signed on
14:22:52 2 December 30th, that sets a schedule for the defendant to file a
14:22:58 3 motion for preliminary injunction, a reasonable time for the
14:23:04 4 plaintiff -- I mean, the plaintiff to file a request for a
14:23:09 5 preliminary injunction, a reasonable time for the defendant to
14:23:12 6 respond, and a reasonable time for the plaintiff to reply.

14:23:15 7 And then once I get that I can go ahead, if you-all
14:23:28 8 are in agreement, I'll look at this without further argument.
14:23:32 9 And I think you-all have gone a long way toward developing this
14:23:35 10 case on the very bunch of stuff -- group of things that I
14:23:39 11 already have, and I suspect you'll write good briefs on this,
14:23:44 12 and I deal with that. And if I grant the preliminary
14:23:50 13 injunction, then we get back together and discuss what needs to
14:23:53 14 be set from that point forward, and the same would be true if I
14:23:58 15 denied the preliminary injunction.

14:24:00 16 So if in between these dates, if this is the way you
14:24:07 17 want to go, you want to schedule some discovery that would just
14:24:12 18 be germane to the request for preliminary injunction, you can
14:24:17 19 do so. But I do think -- we've used a lot of metaphors here
14:24:21 20 today, but I do think we are at the point where a decision
14:24:24 21 needs to be made right now -- maybe not right this minute -- on
14:24:30 22 whether or not we want to go that route or whether we want to
14:24:33 23 continue to proceed the way we are.

14:24:37 24 You've got a potential problem with a trial setting
14:24:40 25 based on the number of things I'm going to have to rule on

14:24:44 1 anyway, but I tend to think you-all might be correct, that this
14:24:47 2 is a better way to go about it than the way we've been going
14:24:53 3 about it.

14:24:54 4 What a lot of times is overlooked is -- and I'm all
14:25:00 5 in favor of a transparent court and transparent justice system.
14:25:05 6 But the problem that arises is lawyers look at the calendar
14:25:09 7 that is online and see that I don't have something set one day
14:25:13 8 or three days in a row or for a week and immediately think
14:25:17 9 those are free days when I can set things. Well, they're not,
14:25:22 10 because with the size of our docket, it takes a long time to
14:25:26 11 write things and to research things.

14:25:29 12 And on well-lawyered, hotly-contested cases, it may
14:25:33 13 seem very obvious to each side, like in this case, which way
14:25:38 14 the Court has to go, but it's not that obvious to the Court.
14:25:43 15 We need to backstop what you put in your briefs. We need to do
14:25:50 16 individual research. And then it's not the easiest and
14:25:53 17 simplest thing to draft an opinion that is coherent, that the
14:25:59 18 party that doesn't like it can take to the Circuit.

14:26:03 19 So there's a lot of time in here involved with the
14:26:08 20 court that is not immediately apparent from the public docket
14:26:12 21 which is posted. And, again, I say what I did a couple of
14:26:17 22 weeks ago, I've got 400 civil cases on any docket. Every one
14:26:21 23 of them has got a problem right now because of the coronavirus,
14:26:25 24 and I have an increasing number of criminal cases that I'm
14:26:29 25 having to deal with first. So you need to factor all that in.

14:26:33 1 So where are we? Do we want to make a decision? Are
14:26:36 2 you-all prepared to make a decision on the route you want to
14:26:40 3 take right now or do you want to talk about it and regroup? We
14:26:44 4 started with Mr. Hamilton before, so, Mr. Hamilton, tell me
14:26:48 5 your current thinking.

14:26:48 6 MR. HAMILTON: Well, Your Honor, I have two thoughts.
14:26:56 7 First, I think it makes sense for us to regroup and allow me to
14:26:58 8 chat or discuss with our team on our side and with Mr. Sweeten,
14:27:03 9 and then we can come up with an agreed order and reconvene.

14:27:07 10 The second thought I had -- and perhaps this ship has
14:27:14 11 sailed and it's not worth raising -- but it would be to
14:27:21 12 accelerate the trial, take the Daubert motion and dispositive
14:27:23 13 motions and those with the trial, roll it all up, and do a
14:27:27 14 trial in early May or early June.

14:27:32 15 That would -- I'm listening to the Court and I'm
14:27:35 16 trying to streamline things. We have a motion to dismiss now.
14:27:39 17 If that's denied, then we have a trial that -- that just
14:27:45 18 incorporates all of the fending motions.

14:27:49 19 THE COURT: If we were to do that -- and I think
14:27:52 20 that's a good idea because nobody waives anything -- I don't
14:27:56 21 look for this to be a lengthy trial. I understand your need
14:28:01 22 for some discovery. But, as I told you before, I look at it a
14:28:05 23 lot more as a legal issue than you do. And nobody -- and,
14:28:11 24 Mr. Sweeten, you don't need to comment on this right now. But
14:28:15 25 we could very easily roll all of the issues into one hearing,

14:28:21 1 you could have argument on it, and we could get it done.

14:28:24 2 And I would suggest -- and I'm going to turn you
14:28:28 3 loose to talk about this, too, along with what else you're
14:28:31 4 talking about.

14:28:32 5 If we did that, the smartest course would be to do it
14:28:36 6 sometime in June, because I'm not convinced that all of the
14:28:40 7 operating orders we have that end the end of April are not
14:28:45 8 going to get extended. I would be concerned about setting this
14:28:53 9 before June.

14:28:53 10 One of the reasons is, this is part of the situation
14:28:59 11 that we have here, the marshals service and other people that
14:29:04 12 advise us want us to keep as few people in the courthouse and
14:29:08 13 as many people out of it as we can. I'm hopeful that we get
14:29:12 14 back to business as normal in May, but I'm not confident of
14:29:16 15 that.

14:29:21 16 MR. HAMILTON: Your Honor, one thing I would just
14:29:22 17 point out, in one of the cases we have, a similar elections
14:29:25 18 case with a similar issue in Florida, the court has scheduled a
14:29:29 19 Zoom trial, where the parties appear by video before Your Honor
14:29:33 20 and we argue it.

14:29:36 21 THE COURT: That would not be my favorite thing. I
14:29:40 22 would do that as a last alternative. One reason is I don't do
14:29:45 23 that kind of stuff well. I'm old school. You're dealing with
14:29:49 24 an old man who hopes he can survive the virus and still be
14:29:54 25 around. If it really gets bad and we have to do it that way,

14:30:01 1 I'll listen to it, but that's not going to be where I want to
14:30:04 2 start planning right now.

14:30:09 3 MR. HICKS: Your Honor, Renea Hicks for the Blodgett
14:30:11 4 plaintiffs.

14:30:11 5 THE COURT: Well, Mr. Hicks, you of all people know
14:30:14 6 that when we got away from yellow pads and ballpoint pens as
14:30:18 7 our technology, I totally lost all contact with what you-all
14:30:21 8 do.

14:30:21 9 MR. HICKS: I haven't gotten away from those yet.

14:30:23 10 THE COURT: Okay.

14:30:24 11 MR. HICKS: I know you're disappointed that I don't
14:30:27 12 have more to say, but I just wanted to get clear that we're
14:30:31 13 riding along with what Mr. Hamilton is saying on behalf of the
14:30:34 14 other plaintiffs. So I just won't step in otherwise.

14:30:37 15 THE COURT: I understand that, Mr. Hicks, and I
14:30:39 16 admire your restraint.

14:30:43 17 Mr. Sweeten, what is your next comment?

14:30:49 18 MR. SWEETEN: Well, Your Honor, as we walked in --
14:30:50 19 walked into the conference room with this telephone call with
14:30:54 20 an agreement that we would at least have until -- with opposing
14:30:58 21 counsel that we would at least have until June 1st to conduct
14:31:00 22 our discovery and he agreed that we've got a whole bunch of
14:31:04 23 logistical issues. So when we're talking about finishing this
14:31:08 24 case up in May, that obviously concerns me. I think we
14:31:13 25 could --

14:31:14 1 THE COURT: Well, let me just tell you we're not
14:31:16 2 going to finish this case in May. That was what I meant by my
14:31:20 3 previous conversation. Nothing is going to happen that early.

14:31:23 4 MR. SWEETEN: Okay. And so taking now I think what
14:31:28 5 the Court is now talking about is a world in which the PI
14:31:31 6 doesn't exist, then I think that -- or they haven't filed it,
14:31:36 7 then I think that right now, you know, I think the big issue is
14:31:40 8 the MTD, which has jurisdictional issues and sovereign immunity
14:31:46 9 issues. So I think that would be the first boulder to move.

14:31:48 10 We have a whole bunch of discovery that we would feel
14:31:51 11 like we need to do unless, you know, in discussions with
14:31:54 12 Mr. Hamilton tells me I'm not calling that witness, I'm not
14:31:57 13 using that guy. I'll cut those depositions. I just need to take who
14:32:01 14 he's going to put up at any sort of trial of this matter.

14:32:04 15 So I think we can go back, you know, to pre-yesterday
14:32:08 16 afternoon when I heard they were thinking of filing a PI, and
14:32:11 17 we could proceed with the trial itself. I do think we need
14:32:15 18 fact discovery, you know, to be extended until June 1st and the
14:32:19 19 other deadlines that we had all talked about.

14:32:22 20 THE COURT: All right. Stop right there. We don't
14:32:25 21 need to talk about all this. Here's the deal: I haven't taken
14:32:28 22 anything off the table. All right? I think the best way to
14:32:31 23 proceed would be to find you a trial setting sometime in June,
14:32:37 24 if you could get everything done then, or at least July. If we
14:32:42 25 had a trial that put all of these issues in it sometime in that

14:32:48 1 range, by mid summer or before the end of July, I have every
14:32:52 2 reason to believe we could get a final judgment out well before
14:33:00 3 the election and an opportunity for whoever didn't like it to
14:33:03 4 get to the Circuit, at least to their emergency panel, as
14:33:06 5 quickly as possible.

14:33:07 6 That is an alternative. If that doesn't work for
14:33:12 7 you-all I am not opposed to looking at going the preliminary
14:33:15 8 injunction route and seeing how that works out. But we all
14:33:20 9 don't need -- I don't need to be in on your discussions on
14:33:24 10 that. I'm happy to go whichever route you want to take,
14:33:28 11 bearing in mind that there are bumps in that road based on
14:33:34 12 where we're hung up with the coronavirus stuff on being able to
14:33:38 13 deal with things as efficiently as I would like to and the fact
14:33:41 14 that I do have a big docket. But, in and around that, I will
14:33:45 15 tell you I find this to be an important case, so I'm going to
14:33:48 16 try to accommodate you where I can.

14:33:50 17 But go back to what I said earlier, this is not
14:33:53 18 business as usual anymore. You-all are going to have to sit
14:33:58 19 down, and as loath as I am to use modern vernacular, think
14:34:02 20 outside the box and come up with a procedure or a way that
14:34:09 21 protects you both, to where you can make the strongest argument
14:34:13 22 you can on your respective positions, and we get this thing out
14:34:16 23 of the trial court and on down the way as quickly as possible.

14:34:22 24 So I think what I would like to do right now is not
14:34:26 25 do anything except ask you-all how long would you need to take

14:34:32 1 to have some time discussing this and trying to come up with a
14:34:35 2 road or a path and how you want to do it, and then we convene
14:34:39 3 another phone call in the near future and talk about that.

14:34:44 4 I sound like Ross Perot many years ago when he was
14:34:49 5 running for president. I'm all ears, you know.

14:35:00 6 MR. HAMILTON: Your Honor, Mr. Hamilton for the
14:35:01 7 plaintiff.

14:35:01 8 I would -- perhaps Monday? This coming Monday would
14:35:05 9 be -- I think that would give us the balance of today,
14:35:08 10 Thursday, and Friday to discuss with Mr. Sweeten the
14:35:16 11 alternatives and some dates and see if we can reach an
14:35:19 12 agreement. And, if we can't, at least highlight where we're
14:35:22 13 disagreeing and then reconvene on Monday to present that to the
14:35:26 14 Court. We could also probably do it by Friday as well. But
14:35:29 15 there are depositions scheduled for both Thursday and Friday,
14:35:32 16 so I'm thinking Monday.

14:35:33 17 THE COURT: I'm not pushing you on this, because
14:35:35 18 we've got a little breathing room right now anyway under the
14:35:39 19 existing order.

14:35:40 20 So, Mr. Sweeten, what do you think about getting
14:35:42 21 together Monday? And I'm not trying to push you to Monday if
14:35:45 22 you need more time than that. I'm much more interested in
14:35:49 23 you-all having sufficient time to discuss this with your
14:35:52 24 clients and discuss it among yourselves and come up with a path
14:35:55 25 to the end that makes sense that we can all live with than I am

14:35:59 1 pushing you to give me a response on Friday or Monday or
14:36:04 2 Tuesday.

14:36:05 3 I remind you-all, as I remind lawyers all the time,
14:36:09 4 you only have one role in this, case and that's to resolve the
14:36:12 5 case. And we've discussed various ways you can get it to the
14:36:15 6 point of resolution. There may be more that we haven't even
14:36:19 7 thought about.

14:36:19 8 So, Mr. Sweeten, tell me what you think would be a
14:36:21 9 reasonable period of time for us to try to regroup here.

14:36:25 10 MR. SWEETEN: Your Honor, I think that we can make
14:36:27 11 some progress between now -- I think Monday sounds great. I
14:36:31 12 think we can get back to this court, and hopefully we will have
14:36:34 13 made some progress on, you know, the witness numbers and the
14:36:40 14 scheduling order and some other issues. So I'm hopeful that we
14:36:43 15 can make some progress.

14:36:44 16 THE COURT: No. Let me tell you what I want you to
14:36:46 17 make some progress on more than that. I want you to make some
14:36:50 18 progress over what the path is, not the -- it would be good to
14:36:53 19 have it on the witnesses and stuff. But I want to know if
14:36:57 20 there is a chance that, if I block out time in June or July, we
14:37:03 21 can hear this case on the merits. I want to know, if we're not
14:37:06 22 going to do that, what you-all have talked about, about going
14:37:12 23 the preliminary injunction route.

14:37:13 24 Otherwise, I can deal with your witness stuff right
14:37:16 25 now. I've heard enough on it, and I can get an order out this

14:37:19 1 afternoon telling you what you're going to do with your
14:37:21 2 witnesses.

14:37:22 3 So I want a much more in-depth study by you-all about
14:37:28 4 resolving this case and how we're going to do it. And, again,
14:37:32 5 think outside the box. You know, it is not business as usual.
14:37:36 6 Listen to those two things. That's what I want. I want you to
14:37:39 7 forget the way you've tried every other lawsuit you've ever
14:37:43 8 tried and come up with some reasonable way to get this case
14:37:47 9 done.

14:37:48 10 Now, how long do you need to have discussions about
14:37:51 11 that?

14:37:51 12 MR. SWEETEN: Oh, I think -- and I did intend -- I'm
14:37:55 13 sorry I didn't put that in my list. I did intend to talk about
14:37:58 14 all those issues, Your Honor, and will do. And Monday would be
14:38:01 15 enough time, I think, for Mr. Hamilton and I and our groups to
14:38:04 16 get together and try to see what we can work out and then come
14:38:08 17 back and report to the Court.

14:38:09 18 THE COURT: All right. Would you prefer to have the
14:38:11 19 telephone conference in the morning or in the afternoon?

14:38:18 20 MR. SWEETEN: I think either way would work, but I'd
14:38:19 21 probably prefer Monday afternoon about this same time if that's
14:38:24 22 all right with the Court.

14:38:24 23 THE COURT: It would be a little later. I could give
14:38:25 24 you three o'clock. I've got another -- everything I'm doing is
14:38:27 25 by telephone right now, obviously. But I've got another

14:38:31 1 telephonic conference at 2:00. So how would three o'clock
14:38:35 2 Monday sound for you-all?

14:38:36 3 MR. SWEETEN: That works well, Your Honor.

14:38:37 4 MR. HAMILTON: And for Mr. Hamilton for the
14:38:40 5 plaintiffs, that's fine, Your Honor. That works well.

14:38:42 6 THE COURT: All right. Then I'm going to leave
14:38:44 7 everything we have in place now in place, and we will
14:38:47 8 reschedule the telephonic scheduling conference for
14:38:53 9 three o'clock on Monday. It will be the same call-in and
14:38:56 10 everything that you already have.

14:39:00 11 And you-all see what you can come up with, because I
14:39:03 12 mean it: I will accommodate you any way I can reasonably
14:39:10 13 accommodate you if you-all will work together on this.

14:39:16 14 MR. HAMILTON: Thank you, Your Honor. We very much
14:39:17 15 appreciate that.

14:39:18 16 THE COURT: All right. I look forward to talking
14:39:20 17 with you again on Monday.

14:39:22 18 MR. HAMILTON: All right. Thank you, Your Honor.

14:39:23 19 MR. SWEETEN: Thank You, Judge.

14:39:24 20 MR. HICKS: Thanks.

14:39:25 21 (End of transcript)

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1 **UNITED STATES DISTRICT COURT)**

2 **WESTERN DISTRICT OF TEXAS)**

3 I, Arlinda Rodriguez, Official Court Reporter, United
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